

Claims 1-8 and 38-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Simms. This rejection is respectfully traversed.

The Examiner agrees that Simms does not teach the “specific optimal lengths, ranges, or percentages of both the front portion and the portion from the pivot axis to the rear surface. More specifically the front portion being equal to the rear portion or no more than [45] percent less than the rear portion.” However, the Examiner asserts that

[i]t would have been an obvious matter of design choice to make the front portion a length of 6 mm and the rear distance a length of about 10 mm or any other optimal lengths, or percentages of front distance as compared to rear distance, *for the purpose of finding the best front to rear distance ratio to correctly balance the shaving head*, because discovering optimal lengths from a pivot axis to balance the shaving head would have been a mere design consideration based on the length of the various materials and objects included in the shaving head.

This is a classic example of hindsight reconstruction. The Examiner is starting from the problem solved by the Applicant, i.e., balancing the cartridge about the pivot axis. However, it was Applicant who recognized this problem, which is not mentioned in the art of record. The Examiner then works backwards from this starting point, improperly using Applicant's disclosure as a guide to reconstruct Applicant's invention from the prior art.

The Examiner bases his conclusion of obviousness on the proposition that “it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art,” gleaned no doubt from MPEP 2144.05 (II)(A), which cites In re Aller, 105 USPQ 233, in support of this assertion. Applicant respectfully notes that in In re Yates, 663, F.2d 1054, 1056 (CCPA 1981), the court expressed a concern with using In re Aller to support such a broad proposition:

The problem, however, with such “rules of patentability” (and the ever-lengthening list of exceptions which they engender) is that they tend to becloud the ultimate legal issue – obviousness – and exalt the formal exercise of squeezing new factual situations into

preestablished pigeonholes. Additionally, the emphasis upon routine experimentation is contrary to the last sentence of section 103.

The proper test for non-obviousness is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains, as explained in Graham v. John Deere and Co., 383 U.S. 1 (1966).

Applicant respectfully submits that it would not have been obvious to the artisan to provide a cartridge in which the guard has Applicant's claimed balance of front and rear distances from the pivot axis, thereby providing a cartridge that is substantially balanced about the pivot axis. The Examiner endeavors to support his conclusion of obviousness by contending that "discovering optimal lengths from a pivot axis to balance the shaving head would have been a mere design consideration based on the length of the various materials and objects included in the shaving head." The verb "discover" is apt: there is nothing in the prior art that would have led the artisan, "based on the length of the various materials and objects included in the shaving head," to modify Simms to reach Applicant's invention. Instead, this was Applicant's discovery.

Nor is In re Aller on point with regard to its facts. In In re Aller, the cited reference described a single experiment that would have invited further optimization (according to the Board, "any one in possession of the information presented by Hock et al. would naturally experiment to discover optimum conditions of temperature and concentration of acid for commercial exploitation of the process.") In contrast, in the present case there is nothing whatsoever in the art of record that would have led the artisan to believe that the Simms razor required further optimization in any respect, much less with respect to its balance characteristics.

In view of the above, Applicants respectfully submit that the rejection of the claims as obvious in view of Simms is improper, and request that it be withdrawn.

Various dependent claims have been rejected as unpatentable over Simms combined with secondary references (claims 9, 12-15, 46 and 47 -- Simms in view of Apprille; claims 10 and 16 -- Simms in view of Andrews; claim 11 -- Simms in view of Gilder; and claims 17-18 and 48-49 --

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Simms in view of Rozenkranc.) Applicants submit that these claims are patentable for at least the reason that they depend from a patentable base claim.

Applicants have not addressed each and every point made by the Examiner, as it is believed that some points, e.g., regarding secondary references, are moot in view of the above remarks. However, Applicant reserves the right to address any such points during further prosecution.

It is believed that no fees are due with this submission. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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